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Draft report

Annex II

Report of the Chair of the Working Group on the Definition and Delimitation of Outer Space

1. Pursuant to General Assembly resolution 72/77, the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, at its 957th meeting, on 9 April 2018, reconvened its Working Group on the Definition and Delimitation of Outer Space, with José Monserrat Filho (Brazil) as Chair.

2. The Chair drew the attention of the Working Group to the fact that, pursuant to the agreement reached by the Subcommittee at its thirty-ninth session and endorsed by the Committee at its forty-third session, both in 2000, and pursuant to General Assembly resolution 72/77, the Working Group had been convened to consider only matters relating to the definition and delimitation of outer space.

3. The Working Group had before it the following:

(a) Note by the Secretariat on national legislation and practice relating to the definition and delimitation of outer space (A/AC.105/865/Add.20 and A/AC.105/865/Add.21);

(b) Note by the Secretariat on questions on suborbital flights for scientific missions and/or for human transportation (A/AC.105/1039/Add.10 and A/AC.105/1039/Add.11);

(c) Note by the Secretariat entitled "Definition and delimitation of outer space: views of States members and permanent observers of the Committee (A/AC.105/1112/Add.4 and A/AC.105/1112/Add.5);

(d) Working paper prepared by the Chair of the Working Group on the Definition and Delimitation of Outer Space entitled "Promoting the discussion of the matters relating to the definition and delimitation of outer space with a view to elaborating a common position of States members of the Committee on the Peaceful Uses of Outer Space" (A/AC.105/C.2/L.302);

(e) Working paper submitted by the Russian Federation entitled "The challenging context of considering all aspects of the delimitation of airspace and outer

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space: arguments for adding dialectical elements to, and setting new analytical trends in, discussion of the issue" (A/AC.105/C.2/L.306);

(f) Conference room paper entitled "Suborbital flights and the delimitation of airspace vis-à-vis outer space: functionalism, spatialism and State sovereignty", submitted by the Space Safety Law and Regulation Committee of the International Association for the Advancement of Space Safety (IAASS) (A/AC.105/C.2/2018/CRP.9).

4. The Chair of the Working Group gave a presentation in which he provided a summary of the replies received from Czechia, Mexico and South Africa, and IAASS that were contained in the documents referred to in paragraphs 3 (a)–(c) above. He also provided a summary of the working paper submitted by the Russian Federation, referred to in paragraph 3 (e) above.

5. The Chair gave a presentation on the proposal regarding the promotion of the discussion of the matters relating to the definition and delimitation of outer space with a view to elaborating a common position of States members of the Committee, which had been made available to the Working Group in the conference room paper referred to in paragraph 3 (d) above. The proposal concerned the establishment of a special regime that would contemplate passage rights through national airspace for space activities as long as they were deemed to be peaceful, in conformity with international law and respectful of the sovereign interests of the territorial State or States concerned. The proposal was built on an approach that not only paid tribute to past proposals within the Working Group and the Subcommittee, but also included compromises, taking into consideration the differing positions put forward by delegations to the Subcommittee.

6. The Chair stressed that only through a compromise might it be possible to clarify the international rules applicable to human activities in airspace and outer space.

7. The view was expressed that it had become obvious that, given the current realities of space activities, neither spatial nor functional approaches to the definition and delimitation of outer space would resolve the matter.

8. The view was also expressed that no problems existed that warranted the definition and delimitation of outer space. The delegation expressing that view was also of the view that the absence of the definition and delimitation of outer space was not an oversight, but rather a choice that had been made by lawmakers who had dealt with the creation of current international space law. Furthermore, the definition and delimitation of outer space would reduce flexibility in the regulation of space activities and would be a potentially counterproductive move.

9. The view was further expressed that, with regard to the problem of the definition and delimitation of outer space — similar to many fields and areas of law, in particular international law — in order to efficiently address legal problems that could arise, the area of application remained essential to classifying the requirements and the obligations to be fulfilled. The absence of a clear definition of an area of application significantly threatened the consistent enforcement of laws, rules and regulations.

10. The view was expressed that, for the effective solution of matters relating to the definition and delimitation of outer space, it was essential to establish forward-looking laws that would be based on a compromise between spatial and functional approaches.

11. The Working Group agreed:

(a) To continue to invite States members of the Committee to submit information on national legislation or any national practices that might exist or were being developed that related directly or indirectly to the definition and/or delimitation of outer space and airspace;

(b) To continue to invite States members and permanent observers of the Committee to submit concrete and detailed proposals regarding the need to define and

delimit outer space, or justifying the absence of such a need, or to provide the Working Group with specific cases of a practical nature relating to the definition and delimitation of outer space and the safety of aerospace operations. Such structured, consistent and grounded contributions would be considered by the Working Group at its future meetings;

(c) To continue to invite States Members of the United Nations and permanent observers of the Committee to provide their replies to the following questions:

(i) Is there a relationship between plans to establish a system of space traffic management and the definition and delimitation of outer space?

(ii) Is there a relationship between suborbital flights for scientific missions and/or for human transportation and the definition and delimitation of outer space?

(iii) Will the legal definition of suborbital flights for scientific missions and/or for human transportation be practically useful for States and other actors with regard to space activities?

(iv) How could suborbital flights for scientific missions and/or for human transportation be defined?

(v) Which legislation applies or could be applied to suborbital flights for scientific missions and/or for human transportation?

(vi) How will the legal definition of suborbital flights for scientific missions and/or for human transportation impact the progressive development of space law?

(vii) Please propose other questions to be considered in the framework of the legal definition of suborbital flights for scientific missions and/or for human transportation.